CHUAH THYE PENG & ANOR. v. KUAN HUAH OONG

[O.C.J. (Gunn Chit Tuan J.) April 17, May 9 and 23, 1978]
[Penang — Originating Summons No. 578 of 1977]

Family Law — Guardianship of Infants — Welfare of child — Paramount but not exclusive and only consideration — Religion of father of child — Paternal grandparents claiming custody — Child left in custody of maternal grandmother by parents of child — Parents killed in air-crash — Chinese custom — Civil Law Act, 1956, s. 27 — Guardianship of Infants Act, 1961, s. 11.

Chinese Customary Law — Guardianship of infant — Rights of paternal grandparents.

In this case the paternal grandparents of the infant claimed custody of the child aged 7 months. The parents of the child were killed in an aircrash and had left the child with the maternal grandmother of the child before they left. The applicants claimed that in accordance with Chinese customary law as well as under the provisions of the Guardianship of Infants Act, 1961, they were entitled to be appointed the guardians of the child. The father of the child was a Buddhist and the paternal grandparents were also Buddhists. The maternal grandmother was a Methodist although her husband was a Buddhist.

Held: (1) in considering the application under the Guardianship of Infants Act, 1961, the court should have regard primarily to the welfare of the infant and only consider the religion and customs of the parties concerned provided they were consistent with the welfare of the infant;

(2) although the welfare of the infant is of paramount importance, it is not the exclusive and only consideration. The use of the word "primarily" in section 11 of the Guardianship of Infants Act implies that there are other circumstances that are to be considered in the process of consideration and weighing;

(3) in this case both sides were unimpeachable and of the highest moral character and there was not much to choose between the two households; apart from considerations of Chinese customary law for which regard should be given in this case, the infant's paternal grandparents would be the more proper persons to bring him up as a Buddhist which would have been the wishes of his parents if they were alive;

(5) it would therefore be for the child's benefit and welfare in the long term view, that custody, care and control of the infant be given to the applicants, his paternal grandparents, subject to liberal access by the respondent and her husband at all reasonable times.

Cases referred to:-

(1) *Mary Ng & Anor.* v. *Ooi Gin Teong* [1972] 2 M.L.J. 18.
(2) *Dorothy Yee Yeng Nam* v. *Lee Fah Kooi* [1956] M.L.J. 257, 263.
(3) *Re Satpal Singh, an Infant* [1958] M.L.J. 283, 285.
(4) *Re Tan Soh Sim (deceased)* [1951] M.L.J. 21.
(5) *Ang Siew Hock & Ors.* v. *Ang Choon Koay* [1970] 2 M.L.J. 149, 150.
(6) *S.P. Ponniah Pillay* v. *Senthamarai* [1954] M.L.J. 175.
(7) *Re Balasingam & Paravathy* [1970] 2 M.L.J. 74.
(8) *In re McGrath* [1892] 1 Ch. 143, 148.
(9) *Re E (an infant)* [1963] 3 All E.R. 874, 879.
(10) *Tek Eng Kim* v. *Yew Peng Siong* [1977] 1 M.L.J. 234, 239.
(11) *J.* v. *C.* [1970] A.C. 668, 715, 726.
(12) *Re O (Infants)* [1962] 2 All E.R. 10.
(13) *Re Thain* [1926] Ch. D. 676, 684.
(14) *Re F (an infant)* [1969] 2 All E.R. 766, 768.

ORIGINATING SUMMONS.

A. Jayadeva for the applicants.

N.T. Vello for the respondents.

Gunn Chit Tuan J.: These proceedings, which were heard in Open Court, were commenced by way of an originating summons dated December 24, 1977 taken out under the Guardianship of Infants Act, 1961, and Order 55A of the Rules of the Supreme Court, 1957, by the paternal grandparents of an infant who claimed the custody of their grand-child. In their application they prayed for the following orders:—

(1) That the applicants abovenamed being the lawful paternal grandparents of Alexander Chuah Li Ming, an infant male child aged seven (7) months born in Penang on the 21st day of May, 1977 to Chuah Leong Hai and his wife, Kuan Guat Hoon both deceased, be appointed the guardians of the said Alexander Chuah Li Ming during his minority or until further order.

(2) That the custody and care of the said Alexander Chuah Li Ming be committed to the applicants during his minority or until further order.

(3) That the respondent do forthwith deliver up the said Alexander Chuah Li Ming to the custody of the applicants.

(4) That the respondent and her husband as the maternal grandparents of the said Alexander Chuah Li Ming are entitled to access to the said Alexander Chuah Li Ming at reasonable times.

(5) For such further or other order as the court deems fit.

The originating summons was served on the respondent, the maternal grandmother of the infant in whose care his deceased parents had left him before they went away. The facts of this case, as disclosed in the affidavits of the applicants and the respondent and in the reports of the welfare officer, showed that the said infant was born in Penang on May 21, 1977, to one Chuah Leong Hai and his wife Pearl Kuan Guat Hoon who were lawfully married at the Registry of Civil Marriages, Penang on April 15, 1976 under the provisions of the Civil Marriages Ordinance. They were both residing at the respondent's house at No. 57-J Choong Lye Hock Road where the said infant was born.

On December 4, 1977 the said Chuah Leong Hai and his wife, Pearl Kuan Guat Hoon were both killed in the tragic air-crash over Johore whilst they were travelling in a Malaysian Airlines System plane to attend a business conference in Kuala Lumpur. The applicants, who were the lawful parents of the said Chuah Leong Hai, their only son, claimed that in accordance with Chinese customary law as well as under the provisions of the Guardianship of Infants Act, 1961, they were entitled to be appointed the guardians of the said infant.

The first applicant, Chuah Thye Peng, who is now 56 years old, is a Government pensioner having retired as a school teacher in 1976. His pension is $494.63 a month, but he is still giving private tuition from which he earns about $250 a month. He has two unmarried daughters, aged 24 and 22 years, both of whom are employed and are residing with him in his house at No. 15 Gopeng Road, Penang. The second applicant, who is now 45 years old and was educated at the Methodist Girls School and the Hee Yew Seah Chinese School up to Junior Middle One, is now a housewife. Both applicants are respectable and res-

ponsible persons of good character and come from good families. The second applicant is the sole beneficiary named in a life assurance policy issued by the Great Eastern Life Assurance Company Limited on the life of her late son, the said Chuah Leong Hai who died in the air-crash. She would be receiving a sum of $99,495.55 in due course as the sole beneficiary named in the said life assurance policy.

The respondent, who was educated at the Anglo-Chinese Girls School, Penang, is now aged 55. She has worked as a dental surgery assistant with the Health Department for 16 years and stopped working in 1968 in order to follow her husband to Brunei where she resided until October 31, 1976 when she returned to Penang. The respondent's husband, Kuan Huah Oong, who is now aged 56, has been employed since 1968 as the Superintendent of the Brunei Swimming Club on a contract basis. He is still working there in that capacity on a monthly salary of $1,734 together with an allowance of approximately $200 for giving private swimming lessons. The late Pearl Kuan Guat Hoon was the respondent's adopted daughter, and the respondent and her husband has another natural-born daughter called Kuan Huah Choo who is married to a Mr. Goh Ching Ming, a land broker. They live at No. 8 Lengkok Berat, Penang, and one of their sons, a 9-year old boy called Goh Soon Teik died together with the late Pearl Kuan Guat Hoon and her husband in that tragic air-crash. The respondent also has an adopted son who is now three years old.

Apart from the affidavits and the reports of the welfare officer, the applicants called a Mr. Lee Siow Mong to give expert evidence on Chinese family law. Mr. Lee, whose evidence as an expert has been accepted by the courts in Malaysia and Singapore, stated that the fundamental principle of succession in a Chinese family was that a son succeeds the father in regular order. Only sons can perform ancestral worship because a woman marries out and becomes a member of her husband's family. The question of guardianship has never arisen because such a matter has never been disputed. It is the undisputed right of paternal grandparents under Chinese customary law to have the guardianship of the son of their deceased son. Mr Lee added that there was, however, a system under Chinese customary law whereby a man married into his wife's family but that would only happen if the man was not the only son of his father's family. Under cross-examination Mr. Lee agreed that ultimately it was for the court to decide in this matter and that Chinese customary law was not the sole criterion of guardianship in this country. He also agreed with counsel for the respondent that in places like Hong Kong, statutory law and common law have modified Chinese customary law and practice and as far as he knew there has been no statutory recognition of guardianship according to Chinese customary law.

A question therefore arose as to what weight the court should give to customary law in such cases? Mr. Vello, counsel for the respondent, referred to the case of *Mory Ng & Anor.* v. *Ooi Gim Teong*[1] in which Mohamed Azmi J. had in turn referred to the case of *Dorothy Yee Yeng Nam* v. *Lee Fah Kooi*[2] in which Thompson J. (as he then was) has stated that the "courts in effect have given judicial recognition to certain customs prevalent or thought to be prevalent among persons of Chinese race irrespective of their domicile or religion. They have thus set up what might be called a sort of common law as affecting persons of Chinese race..." Counsel also referred to the Singapore case of *Re Satpal Singh, an infant*[3] in which Buttrose J. expressed the view that "the court, in exercising its discretion under the Guardianship of Infants Ordinance... should bear in mind the customs of the parties but should not consider itself bound by them as then it would not be exercising the discretion entrusted to it by the Ordinance."

On this point, Mr. Jayadeva, counsel for the applicants, contended that as the parties were of the Chinese race domiciled in Penang, their personal law should be considered to ascertain what he called "the parental rights" over the infant. He referred to the case of *Re Tan Soh Sim (deceased) Chan Lam Keong & 4 Ors.* v. *Tan Saw Keow & 3 Ors.*[4] in which the then Court of Appeal had held that Chinese family law, subject to modern and local modifications, was still the personal law of Chinese domiciled in the Malay States, except where excluded by express legislation, e.g. the Distribution Enactment. In that case the court held that a Chinese adoption was still legal and effective. Counsel also pointed out that that case was reaffirmed in the more recent case of *Ang Siew Hock & Ors.* v. *Ang Choon Koay.*[5]

With respect I think that on this question concerning the custody of an infant, we need not now look beyond section 27 of the Civil Law Act, 1956, and the cases of *SP. Ponniah Pillay* v. *Senthamarai d/o Vellasamy*[6] and *Re Balasingam & Paravathy, Infants Kannamah* v. *Palani.*[7] Section 27 of the Civil Law Act, 1956, concerning infants reads as follows:—

"In all cases relating to the custody and control of infants the law to be administered shall be the same as would have been administered in like cases in England at the date of the coming into force of this Act, regard being had to the religion and customs of the parties concerned, unless other provision is or shall be made by any written law."

In the case of *SP. Ponniah Pillay* v. *Senthamarai d/o Vellasamy*, the applicant had applied by originating summons for the custody of his infant child by the respondent. The parties were of Indian nationality, of Hindu religion and they were not legally married. Counsel for the applicant in that case had submitted that the matter should be governed by Hindu law and referred to the Hindu law on the subject of the custody of illegitimate children. It was held by Buhagiar J. that (1) under section 6(i) of the Civil Law Enactment, 1937, English law applied to cases relating to custody and control of infants but regard is to be had to the religion and customs of the parties, and such modifications are to be made as are necessary to prevent it from operating unjustly and oppressively; (2) the religion and customs of the parties cannot have the effect of ousting the principles of English law; they can only have the effect of modifying it, in so far only as may be necessary to fit the circumstances of each case; (3) according to the authorities on Hindu law it did not appear that the father of an illegitimate child has an absolute right to the custody of the child but whatever the rights are the primary consideration in cases of this nature should be the welfare of the

infant. In the case of *Re Balasingam & Parvathy, Infants*[7] Raja Azlan Shah J. (as he then was) held that English Law was applicable to cases regarding the custody and control of children but regard is to be had to the religion and customs of the parties. I therefore had no doubt that in considering this application under the Guardianship of Infants Act, 1961, the court should have regard primarily to the welfare of the infant and only consider the religion and customs of the parties concerned provided that they were consistent with the welfare of the infant.

Although in these proceedings the paramount consideration is the welfare of the infant, welfare includes moral welfare and is not limited to material welfare only. Thus, Lindley L.J. has said in the case of *In re McGrath*[8] that: —

"The dominant matter for the consideration of the court is the welfare of the child. But the welfare of the child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded."

The said section 27 of the Civil Law Act, 1956, allows a court to consider the religion of the parties concerned and with respect I agree with Wilberforce J. in *Re E (an infant)*[9] that religious upbringing is an element of great importance. I therefore enquired and was informed by counsel for the respondent from the Bar that the respondent was a Methodist whilst her husband was a Buddhist. The applicants, on the other hand, are Buddhists. Counsel for the applicants also informed me from the Bar that at the funeral of the parents of the infant at Johore, Buddhist funeral rites were performed for them. It seemed clear therefore that the agnates of the infant embrace the Buddhist religion and here I think one should again bear in mind the following words of Lindley L.J. in the said case of *In re McGrath*[8]: —

"The wishes of the father if not clearly expressed by him must be inferred from his conduct. If the father is dead it will be naturally inferred that in the absence of evidence to the contrary his wish was that the children should be brought up in his own religion; that is, the religion which he professed. This inference is one which the court in the absence of evidence to the contrary is bound to draw, and is practically not distinguishable from a rule of law to the effect that an infant child is to be brought up in its father's religion unless it can be shewn to be for the welfare of the child that this rule should be departed from, or the father has otherwise directed."

In this case, in the absence of evidence to show that it would be for the welfare of the infant that, or the infant's father has directed that he be brought up otherwise than as a Buddhist, it should therefore be inferred that the deceased couple would have brought him up as a Buddhist; and it appeared to me that the applicants would be the more suitable grandparents for the infant's religious upbringing.

Counsel for the respondent has contended that between the two households, that of the respondent appeared to be a more suitable and secure home and he has urged me to consider that fact that the infant was born in the respondent's house and that even on that ill-fated day the infant's parents had left him with her. Mr. Vello then referred to the judgment of Raja Azlan Shah F.J. in the recent case of *Teh Eng Kim* v. *Yew Peng Siong*[10] in which his Lordship in considering which of two households could give stability and security to the children involved, had expressed the view that the respondent's wife in that case had started with "immense advantage" in that "she has had the custody, care and control of the children and they had thriven under her care and control". In that case His Lordship also referred to the recent House of Lords' case of *J* v. *C*[11] and quoted with approval the following passage in the judgment of Lord MacDermott:—

"Some of the authorities convey the impression that the upset caused to a child by a change of custody is transient and a matter of small importance. For all I know that may have been true in the cases containing dicta to that effect. But I think a growing experience has shown that it is not always so and that serious harm even to young children may, on occasion, be caused by such a change. I do not suggest that the difficulties of this subject can be resolved by purely theoretical considerations, or that they need to be left entirely to expert opinion. But a child's future happiness and sense of security are always important factors and the effects of a change of custody will often be worthy of the close and anxious attention which they undoubtedly received in this case."

Counsel for the respondent therefore argued that in this case the infant would be one-year old soon and submitted that he was used to the present surroundings and that it might be harmful to have him removed.

On the question of the possible effect on the infant of moving him, Mr. Jayadeva pointed out that the respondent has had the care and control over the infant for only a few months since his parent's death on December 4, 1977. He referred to the English Court of Appeal case of *Re O (Infants)*[12] in which case the husband was a Sudanese and a Moslem, and the wife was an English and a Christian. They intended their matrimonial home to be in the Sudan, where they went shortly after their marriage. There were two children of the marriage, a boy born in 1955 and a girl born in 1956. In 1959 the wife came to England with the children and did not return to the Sudan. The husband who was a man of substance with a comfortable home in the Sudan, came to England in 1960 with a view to persuading her to take the children back to the Sudan. On arrival he was served with a summons making the children wards of court. On the question of custody, it was held that the welfare of the children being the paramount, but not the sole, consideration, regard should also be had to the wishes of an unimpeachable parent and, taking a longer view than one which too greatly emphasised the transient effect of parting between young children, the just order was such as would allow the father to take the son back to the Sudan, where he would be brought up and might eventually succeed to his father's business.

Counsel also referred to an article published in October 1967 in Vol. 83 of the Law quarterly Review, entitled "The dangers of a change of parentage in custody and adoption cases" where the learned author pointed out that until comparatively recently little was known about the dangers to a child's mental and physical health which could conceivably flow from any change of care and it was comfortably assumed that, although the child would quite naturally suffer some distress, he or she would soon "get over it" and no long-term or even short-term detriment to health would be suffered. He referred to the following oft-quoted passage from the well-known case of *Re Thain*[13] in

which Eve J. had stated, with reference to a girl of nearly seven who had been brought up by an aunt and uncle virtually from birth:—

"It is said that the little girl will be greatly distressed and upset at the parting from Mr. and Mrs. Jones. I can quite understand it may be so, but, at her tender age, one knows from experience how mercifully transient are the effects of partings and other sorrows, and how soon the novelty of fresh surroundings and new associations effaces the recollection of former days and kind friends, and I cannot attach much weight to this aspect of the case."

The learned author, however, after examining most of the relevant cases, came to the conclusion that "modern cases reveal a tendency to minimise the effect of medical evidence and, wherever there are other significant factors in the case, to rely on these in preference or in addition to the medical evidence". Mr. Jayadeva however pointed out that there was no medical evidence adduced in this case and submitted that the court could not assume that it would be therefore injurious to the welfare of the child to remove him to his paternal grandparents' home. On the value of expert medical evidence I can do no better than to adopt and follow the views of Lord Upjohn in the said House of Lords' case of *J* v. *C*[11] when His Lordship said that where an infant is under some treatment or requires some treatment for some physical, neurological or psychological malady or condition, medical evidence, if accepted, must weigh heavily with the court. But in the case of a happy and normal infant in no need of such treatment the general evidence of a psychiatrist or other medical practitioner on the dangers of taking particular courses, may be valuable but can only be an element to support the general knowledge and experience of the judge in infancy matters, and a judge, in exercising his discretion, should not hesitate to take risks and go against such medical evidence if on a consideration of all the circumstances the judge considers that the paramount welfare of the infant on the balance of probabilities (for that must be the true test) points to a particular course as being the proper one. There was, as pointed out, no medical evidence here and I was therefore not prepared in this case where the child is normal to speculate that there would be adverse effects in removing him to his paternal grandparents' home. As far as I am aware it is not uncommon in this country for babies of young Alexander's age to be given in adoption without any adverse effects after a change of custody.

However, in deciding this issue, the starting point was section 11 of the Guardianship of Infants Act, 1961, which reads as follows:—

"The court or a judge, in exercising the powers conferred by the foregoing provisions of this Act, shall have regard primarily to the welfare of the infant and shall, where the infant has a parent or parents, consider the wishes of such parent or both of them, as the case may be."

Although the welfare of the infant is of paramount importance, it does not mean that it is the exclusive and only consideration. The use of the word "primarily" by the legislature in the above-quoted section implies that there are other circumstances that are to be considered in the process of consideration and weighing. Special weight must be given to the welfare of the infant but that does not mean that other factors should be left out. Megarry J. in the case of *Re F (an infant)*[14] has pointed out that the welfare of the infant may so clearly point in one direction that it concludes the matter, even if some other consideration points in the opposite direction. On the other hand, it may be that the welfare of the infant could be equally served whichever parent has care and control; or the balance may fall on one side by only a small amount. In those circumstances, the other considerations may be sufficiently strong to determine the matter. His Lordship went on to point out that that process cannot be analysed or carried out according to any formula and said as follows:—

"I do not think that one can express this matter in any arithmetical or quantitative way, saying that the welfare of the infant must, in relation to the other matters, be given twice the weight, or five times the weight, or any other figure. A 'points system' is, in my judgment, neither possible nor desirable. What the court has to deal with is the lives of human beings, and these cannot be regulated by formulae. In my judgment I must take account of all relevant matters; but in considering their effect and weight I must regard the welfare of the infant as being first and paramount. If it is objected that this formulation does little to define or explain the process, I would reply that it is precisely a process such as this which calls for the quality of judgment which inheres in the Bench; and this is a quality which in its nature is not susceptible of detailed analysis. There is a limit to the extent to which the court can fairly be expected to expound the process which leads to a conclusion, not least in the weighing of imponderables. In matters of discretion it may at times be impossible to do much more than ensure that the judicial mind is brought to bear, with a proper emphasis, on all that is relevant, to the exclusion of all that is irrelevant."

In the present case I think it could be said that both sides are unimpeachable and of the highest moral character. Counsel for the respondent has contended that his client's house was a more suitable home for the infant. But having considered the welfare reports I was of the opinion that there was not much to choose between the two households. The respondent's husband has at present a higher income compared to that of the first applicant but there is no evidence and one cannot say how long his employment, which is on contract, would continue in Brunei. As against that, apart from the pension and tuition fees of the first applicant, the second applicant would be receiving the said sum of $99,495.55 in due course as the sole beneficiary named in her late son's life assurance policy. Both sides therefore have some money, a good home and are from what may be called the middle-income group in Malaysia. I therefore came to the conclusion that from the material point of view there was really not much to choose between the two households in which the infant could and would be given a stable and secure home. The infant himself is also the sole beneficiary of his parents' estates and would be entitled to any compensation payable under the Civil Law Ordinance arising out of their death. He would therefore, looking again from the material point of view, not be short of funds.

The respondent, of course, started with an advantage of having had the infant with her since the parent's death on December 4, 1977 and I also noted that the child was born and has been in her house since birth just a year ago. But as pointed out above, apart from considerations of Chinese customary law for which regard should be given in this case, I also considered that the infant's paternal grandparents would be the more proper persons to bring him up as a Buddhist which I think would have been the wishes of his

parents if they were alive. As for medical evidence I have pointed out that though no medical specialist has been called in this case and the court therefore did not have the benefit of any medical evidence for consideration, I agreed with counsel for the applicants that the court should not speculate on this matter. I have also considered and was guided by the above-quoted passage in Lord MacDermott's judgment in the said case of *J* v. *C*[11] and decided, with great respect, that the difficulties of this subject cannot be resolved by any theoretical consideration on my part. If there had been any medical evidence adduced I would have given due weight to the expert opinion of the medical specialist but would, of course, have considered it as only a factor in assisting the court in exercising its discretion in the matter. But as the child's future happiness and sense of security are important factors and as advised by Lord MacDermott in the above-quoted passage of his judgment I gave close and anxious attention to the effects of a change of custody in this case and came to the conclusion, on the balance of probabilities, that although there might be some transient effect of taking the infant away from the respondent, there would be no long-term detriment to his health and welfare in the circumstances of this case. With these factors in mind and after much anxious consideration I have in the end come to the conclusion, though by no very great margin, that it would be for the child's benefit and welfare on the long-term view, that custody, care and control of the infant ought to be awarded to the applicants, his paternal grandparents. Accordingly, I awarded the custody, control and care of the infant to the applicants, subject to liberal access by the respondent and her husband at all reasonable times. I therefore ordered the respondent to forthwith deliver the said Alexander Chuah Li Ming to the applicants. In the circumstances of the case I did not order any costs to be paid by either side.

Order accordingly.

Solicitors: *Jayadeva & Kamal; Chang & Vello.*

PUBLIC PROSECUTOR v. KEDAH & PERLIS FERRY SERVICE SDN. BHD.

[A.Cr.J. (Syed Agil Barakbah J.) April 4 and May 27, 1978]
[Alor Star — Criminal Appeal No. 8 of 1976]

Criminal Law and Procedure — Company charged with knowingly being in possession of uncustomed goods — Ferry boat reconditioned in Singapore — New equipment installed — Duty thereon not paid — Proof of mens rea on part of agents or officers of company — Company acquitted — Ferry boat forfeited — Customs Act, 1967, s. 135(1).

Customs and Excise — Reconditioned ferry-boat — New equipment installed — Company charged with knowingly being in possession of uncustomed good — Customs Act, 1967, s. 135(1).

The respondent company had been acquitted on a charge of being knowingly in possession of uncustomed goods. The company owned a ferry-boat which was sent for reconditioning in Singapore, where new equipment, including engines, were installed. Subsequently the ferry-boat was detained by the customs and the respondent company was charged. The learned President, Sessions Court, although he acquitted the respondent company, ordered the ferry-boat to be forfeited.

The Public Prosecutor appealed against the acquittal and the respondent-company cross-appealed against the forfeiture.

Held: (1) the learned President was correct in acquitting the respondent-company as its officers and agent had no knowledge that the goods were uncustomed;

(2) the items fixed to the boat were nevertheless uncustomed goods and the learned President was right in ordering the forfeiture of the boat.

Cases referred to:-

(1) *Yue Sang Cheong Sdn. Bhd.* v. *Public Prosecutor* [1973] 2 M.L.J. 77.
(2) *Wolfgang Pzetzholdt* v. *Public Prosecutor* [1970] 2 M.L.J. 195, 197.
(3) *Public Prosecutor* v. *Yuvaraj* [1969] 2 M.L.J. 89.
(4) *Public Prosecutor* v. *Tay Yew Lia* [1957] M.L.J. 17.
(5) *Public Prosecutor* v. *Fatimah* [1960] M.L.J. 109.
(6) *Lim Kim Chai* v. *Public Prosecutor* [1963] M.L.J. 26.
(7) *Public Prosecutor* v. *Lee Wye Kheng* [1978] 1 M.L.J. 38.
(8) *Koo Chek Yew & Anor.* v. *Public Prosecutor* [1978] 1 M.L.J. 141, 144.
(9) *Sweet* v. *Parsley* [1969] 2 W.L.R. 470.
(10) *Reg.* v. *Tolson* (1889) 23 Q.B.D. 165, 181.
(11) *Proudman* v. *Dayman* (1941) 67 C.L.R. 536, 540.
(12) *Reg.* v. *Ng Hee Weng & Ors.* [1956] M.L.J. 85.

CRIMINAL APPEAL.

Zulfikli bin Ahmad Makinuddin (Deputy Public Prosecutor) for the Public Prosecutor.

Karpal Singh (*Tan Seng Jin* with him) for the respondents.

Syed Agil Barakbah J.: This is an appeal by the Public Prosecutor against the order of acquittal and discharge of the respondent company, the Kedah & Perlis Ferry Services Sdn. Bhd., made by the President, Sessions Court, Kangar on January 20, 1976. The respondent company was charged for being "knowingly in possession of uncustomed goods . . ." on which Customs duty leviable by law amounting to $31,657.35 has not been paid and thereby committing an offence under section 135(1)(d) and punishable under section 135(1)(i) of the Customs Act No. 62/67.

The respondent cross-appealed against the order of forfeiture of the ferry boat "Pulau Singa" made by the learned President on the same day under section 127(1) of the Customs Act.

There are six grounds of appeal. Deputy Public Prosecutor Zulkifli appeared for the Public Prosecutor and Mr. Karpal Singh and Mr. Tan Seng Jin, for the respondent company.

The undisputed facts of the case were that "Pulau Singa", which belongs to the respondent company, was registered in 1969 with the Registrar of Malaysian Ships and given registered number 324060. The boat plied for hire by carrying passengers to and from Kuala Perlis and Pulau Langkawi. Sometime in September 1972, it underwent reconditioning in Singapore. A certificate for the voyage was issued by the Government Surveyor of Ships (PW1). On September 12, 1972, the boat was sent to Chen Meng Shipyard, Singapore with instructions to change the engines and to repair the roof. Two units of Cummins diesel engine were purchased by the representative of the respondent company from Messrs. Scott & English (S.E.A.)